UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 08-10360-GAO

JAMES RIVER INSURANCE COMPANY,
Plaintiff

v.

ALLIANCE CHILDREN'S SERVICES, INC. and MARCUS P. ROGERS,
Administrator of the Estate of Guadalupe Rosales III,
Defendants.

OPINION AND ORDER
May 8, 2009

O'TOOLE, D.J.

In this dispute about insurance coverage, the parties have filed cross-motions for summary judgment. At issue is whether the plaintiff, James River Insurance Company ("James River"), owes a duty to defend and indemnify the defendant, Alliance Children's Services ("Alliance"), in a civil action pending in Texas, referred to herein as "the Rosales action" (about which more below). James River has moved for summary judgment on its request for a declaratory judgment that it is not required by the policy to provide coverage, as well as for judgment in its favor on Alliance's counterclaims. Alliance has likewise moved for summary judgment on its request for a declaratory judgment that coverage exists under the policy, and also requests that the Court stay its judgment as to the counterclaims until further discovery and briefing can occur.

I. Background

The following is a summary of undisputed facts on the record. James River issued a claims-made commercial general liability policy under which Alliance was a named insured. The policy

provided coverage for the period September 29, 2005 to September 29, 2006. It included an extended reporting period giving the insured thirty additional days, beyond the policy's expiration date, to report claims for "'[b]odily injury' or 'property damage' that occurs before the end of the policy period." (Joint Statement of Facts Ex. H, pt. 2, 14.)

The policy's declaration page (or "Policy Declaration") states: "This policy is on a claims-made and reported basis which provides liability coverage only if a claim is first made and reported during the policy period or any applicable extended reporting period."[1] (Id. Ex. H, pt. 1, 3.) A provision of the basic form of the policy dealing with the scope of coverage was consistent with this general statement. (See id. at 5.) This provision, Section I.1.b of the "Commercial General Liability Coverage Form," stated that the insurance provided under the policy would apply to "bodily injury" only if

> [a] claim for damages because of the "bodily injury" . . . is *first made against any insured . . . during the policy period or any Extended Reporting Period* we provide under Section V – Extended Reporting Periods.

(Id.) (emphasis added). However, in the Alliance policy, this language was amended by an endorsement, identified by the label AH2700US 11-03. That endorsement distinguished between when a claim was "made" and when it was "reported." As modified by endorsement, Section I.1.b provides that the insurance applies if

> [a] claim for damages because of the "bodily injury" . . . is *first made against any insured during the policy period and reported to us* in accordance with the Restricted Reporting Endorsement, AH2301US, *during the policy period or any Extended Reporting Period* we provide under Section V – Extended Reporting Periods.

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[1] A claim, or a request for money damages, is "made" "when notice of such claim is received and recorded by any insured or by [James River], whichever comes first." (Joint Statement of Facts Ex. H, pt. 1, 5.)

(Id. at 30) (emphasis added). The parties' dispute boils down to whether a claim is covered if it is first "made" within an extended reporting period (and thus after the expiration of the policy period), as the language of the declarations page may generally suggest, or whether to be covered a claim must be "made" within the policy period, though it may be "reported" either within that period or within the extended reporting period, as the Section I.1.b endorsement provides.

Coverage provided by the policy came into question when the estate of Guadalupe Rosales III filed a wrongful death action against Alliance on September 28, 2006 (the "Rosales action"). Alliance had been hired by the Texas Department of Family and Protective Services to place and supervise Rosales in a foster home. Alliance, in turn, had hired a sub-contractor to carry out these duties. At the hands of his foster parents or other persons, Rosales died of shaken-baby syndrome in June 2006.

On October 2, 2006, the court papers in the Rosales action were served on CT Corporation ("CT") as Alliance's agent for service, and CT then sent the court papers via Federal Express to Alliance. Alliance itself first received notice of the Rosales action on October 3, 2006 and transmitted the court papers to James River on October 4, 2006 (the "Rosales claim"). Shortly thereafter, James River denied coverage for the Rosales claim for the reason that the claim was not made until the papers in the lawsuit were served on October 2, 2006.[2] (Joint Statement of Facts ¶ 29.) In other words, James River denied coverage because the claim was "made" after the policy period had expired (which occurred September 29, 2006).

[2] It does not matter whether the claim is deemed to have been "made" when the papers were received by CT on October 2nd or by Alliance on October 3rd.

II. Analysis

A. Declaratory Judgment

Massachusetts law treats the interpretation of an insurance policy "no different[ly] from the interpretation of any other contract."[3] Hakim v. Mass. Insurers' Insolvency Fund, 675 N.E.2d 1161, 1164 (Mass. 1997). Absent ambiguity, a policy's words must be construed "in their usual and ordinary sense," id., taking into account "what an objectively reasonable insured, reading the relevant policy language, would expect to be covered," Hazen Paper Co. v. U.S. Fid. & Guar. Co., 555 N.E.2d 576, 583 (Mass. 1990). The policy must also be "construed . . . in a manner which will carry out the intent of the parties." Starr v. Fordham, 648 N.E.2d 1261, 1270 (Mass. 1995) (internal quotation omitted). If ambiguity exists, that is, if "there is more than one rational interpretation of policy language," then the "insured is entitled to the benefit of the [interpretation] more favorable to it." Hakim, 675 N.E.2d at 1165.

Ambiguity, however, does not emerge from every minor inconsistency present in a policy's language. For instance, it may be possible to see ambiguity in the potential conflict between the broad sweep of a general statement and the limits expressed in a later specific statement. However, Massachusetts courts employ a rule of construction which dictates that where general and specific clauses of a contract conflict, the specific clause usually controls. See Rush v. Norfolk Elec. Co., Inc., 874 N.E.2d 447, 453 (Mass. App. Ct. 2007) ("'If the apparent inconsistency is between a clause that

[3] In its motion for summary judgment, James River asserted that Massachusetts law governs this dispute. Alliance did not challenge this choice of law in its motion for summary judgment or reply memorandum. Consequently, I do not resolve any choice of law question, but rather defer to the choice accepted by the parties. See Borden v. Paul Revere Life Ins. Co., 935 F.2d 370, 375 (1st Cir. 1991) ("Where, however, the parties have agreed about what law governs, a federal court sitting in diversity is free, if it chooses, to forgo independent analysis and accept the parties' agreement.").

is general and broadly inclusive in character and one that is more limited and specific in its coverage, the latter should generally be held to operate as a modification and pro tanto nullification of the former.'") (quoting Lembo v. Waters, 294 N.E.2d 566, 569 (Mass. App. Ct. 1973)).

James River points out that in plain language Section I.1.b, as amended by endorsement, imposes separate requirements that must be met to trigger coverage: first, the claim must be "made" within the policy period; and second, the claim must be "reported" either during the policy period or the extended reporting period. Here, the first requirement was not met because the claim was not "made" until October 2, 2006, at the earliest, when the court papers were served on Alliance's agent, CT.[4]

Alliance has two responses. First, it contends that the Extended Reporting Endorsement extends not only the reporting time, but the time in which a claim may first be "made." This argument is meritless. The Extended Reporting Endorsement does not address when a claim must be "made," and it explicitly states that it "does not change the scope of the coverage." (Joint Statement of Facts Ex. H, pt. 2, 14.)

Alliance also argues that the policy language should be deemed ambiguous because the Policy Declaration and amended Section I.1.b define coverage differently. In light of the ambiguity, Alliance says it is entitled it to the interpretation more favorable to it. On its reading of the Policy Declaration, a claim may be "made" and "reported" during either the policy period or the extended reporting period. Because the Rosales claim was "made" during the reporting period, it falls within the scope of the policy's coverage.

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[4] At oral argument, Alliance's counsel insinuated that the Rosales claim was "made" on the date the lawsuit was filed, September 28, 2006, in Texas state court. This argument is without merit in light of the specific definition of "made" provided in the policy and discussed above.

Alliance's ambiguity argument runs afoul of the rule of construction, mentioned above, that specific contract provisions take precedence over more general provisions. See Rush, 874 N.E.2d at 453; Lembo, 294 N.E.2d at 569. The Policy Declaration is a summary overview of the policy and the coverage provided. In contrast, Section I – titled "Coverages" – spells out a detailed description of the scope of coverage under the policy. In particular, amended Section I.1.b describes "Coverage A Bodily Injury and Property Damage Liability." Alliance's interpretation would give effect to the policy's summary cover page, rather than specific policy language outlining the limits of coverage. The argument is untenable.

More importantly, Alliance's argument regarding ambiguity contravenes the central objective of contract interpretation, which is to give effect to the parties' intent. See Starr, 648 N.E.2d at1270. Endorsements, such as the Section I.1.b endorsement, are specifically agreed-to amendments to a basic policy form. Endorsements represent a later expression of the parties' intent on a particular issue. The whole point of an endorsement is to vary provisions in the basic policy form that might otherwise govern. See Nat'l Union Fire Ins. Co. of Pittsburgh, Penn. v. Lumbermens, 385 F.3d 47, 55 (1st Cir. 2004) ("'[W]here the provisions in the body of the policy and those in the endorsement or rider are in irreconcilable conflict the provisions contained in the endorsement or rider will prevail over those contained in the body of the policy.'") (quoting Farmers Ins. Exch. v. Ledesma, 214 F.2d 495, 498 (10th Cir. 1954)). Alliance seeks to ignore the endorsement and give effect to the pre-endorsement language of the Policy Declaration. Construing the policy in that fashion would undermine the clear intent of the parties.

The policy is not ambiguous. Section I.1.b, as modified by endorsement, is the operative provision governing when a claim must be "made" in order to trigger the coverage provided. The policy does not cover the Rosales claim because that claim was "made" after the expiration of the policy period.

B. Remaining Counterclaims

No additional discovery or briefing is necessary to resolve the remaining counterclaims. Because the policy does not provide coverage for the Rosales claim, no breach of contract or breach of good faith and fair dealing has occurred. The claims based on Massachusetts General Laws Chapters 93A and 176D likewise fail because James River's interpretation of the policy was not only plausible, but correct. See Gulezian v. Lincoln Ins. Co., 506 N.E.2d 123, 127 (Mass. 1987) ("An insurance company which in good faith denies a claim of coverage on the basis of a plausible interpretation of its insurance policy is unlikely to have committed a violation of G.L. c. 93A.").

III. Conclusion

For the foregoing reasons, James River's motion for summary judgment (dkt. no. 25) is GRANTED and Alliance's motion for partial summary judgment (dkt. no. 24) is DENIED.

Judgment shall enter declaring that James River does not have a duty to defend or indemnify Alliance in connection with the claims asserted in In the Estate of Guadalupe Rosales, III, Deceased , No. 2006-PC-2594 (Bexar County Prob. Ct. No. 2 Jan. 11, 2007). In addition, judgment shall enter in favor of James River on the counterclaims.

It is SO ORDERED.

/s/ George A. O'Toole, Jr.
United States District Judge